

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOVAN CAMPBELL, on behalf of
herself and all others similarly situated,
Plaintiff,

22-CV-9795 (JPO)

-v-

THE BILLIARD FACTORY, LTD.,
Defendant.

ORDER

J. PAUL OETKEN, District Judge:

Plaintiff Campbell filed this action on November 17, 2022 (ECF No. 1), and served Defendant The Billiard Factory, Ltd. on December 7, 2022 (ECF No. 5). On January 10, 2023, Defendant filed an answer, substantially denying the allegations in the complaint. (ECF No. 8.) On August 29, 2023, this Court ordered Plaintiff to show cause within seven days as to why this case should not be dismissed for failure to prosecute. (ECF No. 9.) To date, Plaintiff has not taken any action responsive to the Court's order to show cause.

Federal Rule of Civil Procedure 41(b) authorizes a district court to dismiss an action "if the plaintiff fails to prosecute or to comply with the rules or a court order." *Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014). It is settled that Rule 41(b) "gives the district court authority to dismiss a plaintiff's case *sua sponte* for failure to prosecute." *LeSane v. Hall's Sec. Analyst, Inc.*, 239 F.3d 206, 209 (2d Cir. 2001). Dismissal without prejudice is appropriate here. Plaintiff was "given notice that further delay would result in dismissal," *U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004), and there is prejudice where Plaintiff has caused an "unreasonable delay." *LeSane*, 239 F.3d at 210. Dismissal without prejudice appropriately strikes a balance "between alleviating court calendar congestion and protecting a party's right to due process and a fair chance to be heard." *Id.* at 209.

Accordingly, this action is dismissed without prejudice.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: September 7, 2023
New York, New York



J. PAUL OETKEN
United States District Judge